

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NICHOLAS LINKO,

Plaintiff,

v.

CAPITAL ONE FINANCIAL  
CORPORATION and CAPITAL ONE  
BANK (USA), N.A.,

Defendants.

Civil Action No. 3:11-cv-02021-ARC

A. Richard Caputo  
United States District Judge

**DEFENDANTS' MOTION TO DISMISS THE COMPLAINT**

Defendants Capital One Bank (USA), N.A. and Capital One Financial Corporation (collectively, "Capital One") respectfully move this Court to dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for the reasons set forth in the accompanying brief, which is incorporated by reference herein.

Respectfully submitted,

Dated: November 7, 2011

/s/ Kevin Batik  
Ronald Crouch  
Pa. Id. No. 35155  
Kevin Batik (admitted pro hac vice)  
Pa. Id. No. 89209  
McGuireWoods LLP  
625 Liberty Avenue, 23rd Floor  
Pittsburgh, PA 15222  
(412) 667-6000

**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that the concurrence in the motion has been sought from each party. Counsel for the Plaintiff does not concur with the relief sought in the motion.

/s/ Kevin Batik

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon the following via notice delivered by the Court's ECF filing system, on the 7th day of November 2011:

Vicki Piontek, Esq.  
951 Allentown Road  
Lansdale, PA 19446

/s/ Kevin Batik